

EXHIBIT D



December 13, 2018

VIA Electronic Delivery

Michael S. Marquis
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, DC 20201
foiarequest@hhs.gov

Re: Freedom of Information Act Records Request

Dear Mr. Marquis,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et seq.*, and the Department of Health and Human Services ("HHS" or "the Department") FOIA regulations at 45 C.F.R. Part 5, Democracy Forward Foundation makes the following request for records.

Background

In November 2018, *The Daily Beast* reported that in advance of an appearance by then-EPA Administrator Scott Pruitt, the cable news program "Fox & Friends" shared its interview script and questions for approval from EPA political officials.¹ This undisclosed collaboration between government officials and a media outlet was troubling and unethical, according to experts cited in the *Daily Beast* story. It may also have been unlawful. The facts documented in the *Daily Beast* story raise serious concerns about how government press offices are deceiving the American people as to their role in creating the material the public receives through the news media.

Records Requested

In an effort to better understand and explain to the public the Department's undisclosed collaboration with media outlets, Democracy Forward Foundation requests that HHS produce the following within twenty (20) working days:

¹ Maxwell Tani, 'Fox & Friends' Fed Interview Script to Trump's EPA Chief, Emails Show, *The Daily Beast*, <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>. (Nov. 27, 2018).

1. All records containing or documenting communications sent to or received by all staff, including officers, employees, and contractors, in HHS's Office of the Assistant Secretary for Public Affairs (ASPA) with the following organizations and domains:
 - Fox News or @foxnews.com
 - Breitbart News Network or @breitbart.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmaxtv.com
 - Daily Caller or @dailycaller.com
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sgbi.net

The search period is January 20, 2017 to the date of search.

Scope of Search

For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

Democracy Forward Foundation requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Democracy Forward Foundation also requests a waiver of search fees on the ground that it qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see generally* 45 C.F.R. §5.54.

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because the records sought will illuminate any undisclosed collaboration between officials at HHS and media organizations. The news account referenced above underscores the public interest in the documents sought. 5 U.S.C. § 552(a)(4)(A)(iii). Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records and the records obtained from this request will be made available to the public at no cost. *See* 45 C.F.R. §5.54(b)(1), (b)(3).

Democracy Forward Foundation also requests a waiver of search fees because it is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Democracy Forward Foundation meets the definition of “representative of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). A core mission of Democracy Forward Foundation is to educate the public about improper government activity, and it intends to use the materials gathered to educate the public through its website, press releases, and social media outlets.² It is therefore a “representative of the news media” 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 45 C.F.R. §5.54(b)(2)(ii).

² *See, e.g.* Vera Bergengruen, New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump, BuzzFeed News (July 25, 2018), [https://www.buzzfeednews.com/article/verabergengruen/these-emailsshow-what-happens-when-t-he-white-house-keeps\(citing to emails obtained through a request for documents made by Democracy Forward under the FOIA\); see also Democracy Forward \(@DemocracyFwd\), Twitter \(July 27, 2018, 8:45 AM\), <https://twitter.com/DemocracyFwd/status/1022870550769754112>.](https://www.buzzfeednews.com/article/verabergengruen/these-emailsshow-what-happens-when-t-he-white-house-keeps(citing%20to%20emails%20obtained%20through%20a%20request%20for%20documents%20made%20by%20Democracy%20Forward%20under%20the%20FOIA);%20see%20also%20Democracy%20Forward%20(%40DemocracyFwd),%20Twitter%20(July%2027,%202018,%208:45%20AM),%20https://twitter.com/DemocracyFwd/status/1022870550769754112)

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact Nitin Shah at foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation